

# CITY OF OAKLAND



DALZIEL BUILDING • 250 FRANK H. OGAWA PLAZA, SUITE 4314 • OAKLAND, CALIFORNIA 94612-2032

Community and Economic Development Agency  
Watershed and Stormwater Management

(510) 238-6815  
FAX (510) 238-6412  
TDD (510) 238-3254

April 3, 2009

MRP Tentative Order Comments  
Attn: Dale Bowyer  
S.F. Bay Water Board  
1515 Clay Street, Suite 1400  
Oakland, CA 94612

SUBJECT: COMMENTS ON REVISED MUNICIPAL REGIONAL STORMWATER NPDES  
PERMIT TENTATIVE ORDER

Dear Mr. Bowyer:

The City of Oakland is submitting these comments regarding the Revised Tentative Order for the Municipal Regional Stormwater NPDES Permit for Discharges from Municipal Phase I Permittees in the San Francisco Bay Region (“Revised Tentative Order”) issued on February 11, 2009. We request that you include these comments in the record of this administrative proceeding. In addition, The City of Oakland supports and concurs with the comments filed by the Alameda Countywide Clean Water Program and the Bay Area Association of Stormwater Management Agencies.

We thank you for this opportunity to submit our comments. The City of Oakland is committed to our environment and supports efforts that will be successful in improving water quality in Oakland and in the San Francisco Bay. Some of the City of Oakland’s most successful efforts include the ban on Styrofoam take-out food containers, implementation of excess litter fees, installation of full trash capture devices, implementation of our creek protection ordinance, construction and demolition ordinances, implementation of green building guidelines, and construction of seven creek and wetland restoration projects with four more in design.

We also thank the Board for many of the changes incorporated in the Revised Tentative Order, including eliminating requirements to purchase specific types of street sweepers, install treatment

systems for road reconstruction projects within the existing footprint, implement an impervious surface data collection pilot project, and perform prescriptive trash requirements. We appreciate the Board's willingness to address some of our previous concerns. However, we are concerned about some of the added new requirements in the Revised Tentative Order. Our primary concerns address the new elements that may be costly and at the same time may not contribute significantly to improving water quality.

The City of Oakland is facing a difficult financial crisis and this will impact our ability to successfully implement the Revised Tentative Order as written. As you may already be aware, the City is facing a \$58 million deficit. This year the City began implementing mandatory business shutdown days and staff furloughs. Additionally, the City recently laid off 27% of its park staff. We expect more layoffs throughout Oakland when the 2009-2010 budget is adopted this June.

The City of Oakland's financial situation is not unique. Many public agencies are facing financial difficulties. Due to reduced sales tax revenues, reduced housing market sales and transfer taxes, and the impact of Proposition 218 on the ability of public agencies to raise stormwater fees and other fees that help to pay for stormwater quality activities, municipalities simply don't have the funds. It is more important now that regulations focus on activities that benefit water quality. We have attempted to focus our comments on creating efficiencies and promoting water quality benefits while reducing financial burdens.

The key revisions that concern us are: the Monitoring provisions, Reporting and Recordkeeping Requirements, Conditionally Exempt Discharges Pump Station Monitoring and provisions in the Pollutants of Concern element.

### **Requirements Imposing Significant Cost without Commensurate Water Quality Benefit**

#### **Monitoring Provision (C.8):**

While there have been some minor improvements to Provision C.8 in the Revised Tentative Order, additional and unnecessary requirements also have been added. The Alameda Countywide Clean Water Program staff has estimated the cost for implementing the monitoring provision of the Revised Tentative Order to be even higher than that of the previous draft Tentative Order. The costs to the City of Oakland alone could be as high as an additional \$1,000,000 over the term of the permit.

There are many costly requirements in the monitoring provision that relate to issues that are not a priority, such as: sampling for and conducting taxonomic identification of algae; sampling for silica, dry weather suspended sediment concentration, temperature, and pathogens; and, additional sediment chemistry and toxicity monitoring to evaluate ambient conditions.

**Proposed Resolution:** Revise Provision C.8 as described in Attachment 2: *Proposed Revisions to and Detailed Cost Estimate for Provision C.8.*

**Reporting and Recordkeeping Requirements:**

There have been improvements to the requirements, in particular, removing the reporting template. However, the reporting and recordkeeping requirements are still onerous and many do not provide significant improvements for accountability. Examples of excessive reporting and recordkeeping requirements include: (1) for each construction site inspection, record the inches of rain since the last inspection (Provision C.6.e.ii.(4).(d)); (2) extensive reporting and evaluation requirements on many of the Public Information and Outreach provisions; (3) monthly reporting on planned and unplanned potable water discharges (Provision C.15); (4) a requirement to provide a rationale for each corrective action that will take more than 10 days to complete (C.5.b.ii(2)); and, (5) an unrealistically short timeframe for submitting monitoring data and reports (C.8.h.iii). For construction inspections the information regarding rainfall since the last inspection is not needed for compliance determination. For the Public Information and Outreach provision, the standard of compliance is conducting the activity. So, although we conduct effectiveness evaluation as needed to improve our program, they are not necessary to measure compliance.

While these individual requirements may not seem too onerous if each one is looked at separately, the cumulative burden of all the reporting requirements can be overwhelming especially for municipalities with limited staff resources.

**Proposed Resolution:** Revise the recordkeeping and reporting requirements as outlined in Attachment 2.

**Conditionally Exempt Discharges (C.15):**

We have four primary concerns with Provision C.15: (1) individual residential car washing has not been included in the list of conditionally exempt discharges; (2) monitoring and reporting is required for discharges from crawl space pumps and footing drains; (3) Permittees are put in the position of managing potable water supply agencies; and (4) onerous monitoring and reporting requirements for sheared fire hydrants.

**Individual Residential Car Washing:** Individual residential car washing has not been included on the list of conditionally exempt discharges. This may be too ubiquitous and burdensome to enforce. It is more appropriate to address this through public education.

**Proposed Resolution:** Add residential car washing to the list of conditionally exempt discharges

**Crawl Spaces and Footing Drains:** This provision requires permittees to require that discharges from crawl space pumps and footing drains be monitored on the first two consecutive days of dewatering and once a month thereafter and maintain records of the monitoring data. There are presumably thousands of these in the City of Oakland, many from single family residences.

**Proposed Resolution:** The Comments and Responses Summary states that new language is likely to be added to the Provision to exempt discharges from single family homes and other small, temporary, and unpolluted discharges. We support in concept those proposed revisions and ask that detailed revised language be included in a supplemental Executive Officer report prior to the May 13 hearing.

Water Supply Agency Discharges: Provision C.15 states that the Permittees must monitor and report or require potable water dischargers to monitor and report on every planned and unplanned discharge from a potable water source. Within the City of Oakland, the potable water supplier is the East Bay Municipal Water District. We do not have the resources to monitor and report on all of the planned and unplanned discharges from EBMUD and do not have a mechanism to require these agencies to report to the Water Board.

**Proposed Resolution:** The Water Board should regulate potable water agencies directly. The monitoring and reporting requirements should be eliminated.

Fire Hydrant Shearing: The requirements to treat, monitor, and report on fire hydrant shearing discharges are not appropriate and place an unnecessary burden on our fire fighting personnel. The requirement to treat the discharge is infeasible due to the large volume and uncontrolled nature of the discharge. If the flows are not being treated, there is no reason to monitor the discharge as the reason to monitor is to assess the effectiveness of the treatment. (We know that the chlorine and pH of the discharge will be typical of the potable water source.) As there should be no treatment or monitoring, there is no reason to report.

**Proposed Resolution:** Fire hydrant shearing should be included in Provision C.15.b.iii(3) Emergency Discharge.

**5,000 Square Foot Treatment Threshold (Provision C.3.b.i(1)):**

The costs associated with tracking and inspecting small treatment devices is too high relative to the benefit. A disproportionate amount of the implementation costs would be directed at inspecting small treatment devices and conducting enforcement actions against parties that are not conducting adequate maintenance. Once these devices are installed, they would need to be inspected and maintained in perpetuity; thus, the cost of inspection and enforcement would continue to increase dramatically over time. It is inefficient and wasteful to dedicate this level of public resources toward the maintenance of small devices that would be of questionable usefulness even if they were rigorously maintained. There is also an excessive administrative burden associated with executing operations and maintenance agreements for each of these devices. Especially considering our current fiscal situation, it is not appropriate to impose this burden on considering the marginal water quality benefit that may be obtained.

**Proposed Resolution:** The 5,000 square foot threshold should be removed. If it is not eliminated then the requirement to establish a maintenance agreement and inspect the treatment systems should not apply to sites between 5,000 and 10,000 square feet.

**Pump Station Monitoring:**

The City of Oakland operates two small stormwater pump stations and four sump pumps; they all operate only during rain. There may be occasional groundwater infiltrating into the pump stations. All eventually discharge into larger bodies of water. It is highly unlikely that the DO level will impact the receiving waters.

**Proposed Resolution:** Allow an exemption from monitoring in situations where it can be demonstrated that there is no potential water quality problem or where the discharge rate is too minimal to impact water quality.

## **Other Concerns**

### **Mercury and PCB Controls:**

Addressing TMDL pollutants, in particular mercury and PCBs, should be a priority for this next permit term; and, we generally recognize the need for and support conducting the various types of pilot projects outlined in the Revised Tentative Order. However, differing interpretations of Provisions C.11 (Mercury Controls) and C.12 (PCB Controls) could result in many more pilot projects required than are feasible. It is our understanding that Water Board staff's intent is that many of the pilot projects in C.11 and C.12 can be completed through the same project, assuming samples are collected and analyzed for both mercury and PCBs. However, there are often slight differences in the language of the two provisions that we believe may cause some confusion.

**Proposed Resolution:** We request the Provisions C.11 and C.12 be combined into one provision to make it clear what is required. We also request that it be made explicit that a pilot project can be credited towards more than one provision (for example, a pump station diversion project could be credited toward both C.12.d and C.12.f.) and that ongoing projects such as the Ettie Street Project could be credited toward completion of the required pilot projects.

### **Trash Controls:**

As with the TMDL pollutants, trash reduction is an appropriate focus for this permit term. We recognize that municipalities need to play a role in reducing the amount of trash entering our creeks and the Bay. However, this is not a problem municipalities can solve by themselves. We agree with the suggestion made by the Board several years ago that a Statewide task force including State and local representatives should be formed to address the trash problem.

We appreciate the increased flexibility provided in the Revised Tentative Order. We also appreciate the reduced scope of the structural control requirements. As with other pollutants, source control is considered more cost effective than treatment. We appreciate the flexibility to pursue source control measures in addition to the implementation of structural controls.

We are concerned that the hot spot reduction target of 100 pieces of trash per 100 feet of creek for targeted trash hotspots may not be attainable or the most effective strategy for reducing trash. Using the Urban Rapid Trash methodology, each piece of broken glass or pieces of paper may count as an individual trash item. It may be impossible for any urban site to meet this standard.

**Proposed Resolution:** Express the Trash Hot Spot Reduction Goal as “either 100 pieces per 100 feet or an 80% reduction from the baseline level.”

The City of Oakland is committed to complying with water quality regulations, and we are even more committed to having a positive impact on water quality and our aquatic environment. We know that we must focus our scarce resources towards activities that control pollutants at the source and that help to clean up our waterways. We look forward to continuing to improve water quality in Oakland.

Sincerely,

Lesley Estes  
Watershed and Stormwater Management  
City of Oakland

Attachments: 1) City of Oakland Table of Proposed Specific Changes to Revised  
Tentative Order  
2) ACCWP Comments on Reporting Requirements of Revised Draft  
Municipal Regional Permit